

**LAKE COUNTY BOARD of ADJUSTMENT**  
**July 10, 2019**  
**Lake County Courthouse Commissioners Office (Rm 211)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen, Mike McKee

**STAFF PRESENT:** Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda

Don Patterson called the meeting to order at 3:31 pm

**ERICKSON CONDITIONAL USE—STONE RIDGE (3:31pm)**

Clint Evenson presented the staff report. (See attachments to minutes in the July 2019 meeting file for staff report.) He shared a larger site plan and identified that attachment 2 was from Missoula designer Mark Schonrock.

Agent Jeff Gallatin had no comments.

*Public comment opened:* None offered. *Public comment closed.*

**Motion made by Frank Mutch, and seconded by Mary Jensen, to approve the conditional use with conditions and findings of fact as written. Motion carried, all in favor.**

**COOK SETBACK VARIANCE—POLSON CITY COUNTY (3:40 pm)**

Rob Edington noted that agent/builder Hu Beaver was here and presented the staff report. (See attachments to minutes in the July 2019 meeting file for staff report.) Regarding item #16 on pg. 5, Rob read comments received from Joel and Sandra Cook on Monday (7/8) after the staff report had been sent out. (See attachments to minutes in the July 2019 meeting file for the handout of comments.)

Frank summarized they were looking at 12 feet of encroachment. For item 10 on pg. 4 with removal of vegetation and so forth, Rob clarified for Frank that the applicants submitted a zoning conformance and would be required to address the lakeshore. This [condition] gave the Board confidence that the lakeshore would be addressed.

For after-the-fact permits, agent Hu Beaver asked if this [development activity] was done prior to the Cooks. Rob replied that based on pictures from 2016 and 2017 permitting, there didn't appear to be anything that couldn't be resolved. It entailed an after-the-fact permit. The previous permit requirements included some reseeding and those sorts of things. Hu noted that as far as the stakes being 39 feet, it was staked in the snow and there might have been a mistake. Rob said with regards to the setback, they just needed to ensure that it met the 50 feet for a zoning conformance permit. Hu asked if the replanting would entail more grass. They were going to put this up above but it didn't fit with the sewer and the house. The people here [at the meeting] didn't see the difference with how steep the road was or how far away from the

property it was. He was pulling out a trailer this morning and going right through the [proposed] garage. It sounded like if it was approved, there were a bunch of conditions. Were the conditions all typical things that they had to do anyway? Rob said the stormwater, the vegetative buffer and the lakeshore for restoring the shoreline planting would be requirements regardless. Hu noted where the drainage swales were. This was why moving the garage back 5 feet would be [problematic], in that those 5 feet were necessary to get those in there and have the septic tank. He described some of the layout and challenges using a map.

Frank thought it sounded reasonable from the staff report. The letter [from Joel Cook] changed his view a little. Was there a plan for the future house? It might help to visualize if it was staked out. Hu said it was there but you really didn't see the road on that plan. It only showed the setbacks. The road was outside of that. Steve asked if the road was in the setback as shown. Hu replied no. It was in the ravine of the survey, which he pointed to. They discussed how it ran, using the map, as well as figures and placements. Hu noted you needed to put the trees and the well in the picture, and then try to drive down there and turn around.

Steve listed some of the functions of setbacks, such as to make sure if there was a structure fire, it didn't pass to the next property. If there needed to be some kind of access down the edge of the property, not having a building close to the property provided that emergency access. Area between the property line and buildings was needed for building maintenance and other maintenance. Making sure the development that took place on a property and the associated work all stayed on the property meant the setbacks got used during development, too. Having decent setbacks provided a rural lifestyle. The hard thing for him was to figure out if the Cooks' hardship offset those benefits. Hu said 12 feet was enough setback to do all of the construction and any kind of maintenance. It was the setback on a 100-foot wide lot, which was the majority of them. The neighbors got to build 5 or 10 feet from the line (probably before the zoning). It wasn't an out-of-this-world request to try to minimize. He thought the things that Steve mentioned were all possible with 12 feet.

Rob responded to questions. The Cooks acquired the property in August 2018. The change from a 30-foot to 20-foot or 10% setback occurred after they purchased the property but prior to applying, so the change would apply.

Mike described the driveway as level at the top. Then you go down the equivalent of a double black diamond ski run, so the letter presented today made good sense to him. The property to the north was the closest to the affected property line for the proposed reduced setback. The neighbors had no structures immediately to the north of the line. He assumed they'd been noticed properly and voiced no objections. Hu noted they'd built up above. Mike said he had no problem with this. Regarding the distance from the end of the driveway to where the garage would be on the opposite side of the property, Steve asked if there was room to turn a boat trailer around. Mike said it depended on the driver. Hu said with a 35-foot trailer and a 30-foot truck, you needed space to turn it in 100 feet. Mike thought the 5 feet would make a practical difference and might eliminate maneuverability. Hu and Mike agreed it sounded good on paper. Mike summarized that the access wasn't just a little slope. Mary touched on the ravine. Hu said it took a lot of space but they would cut it some in the middle. He described it further.

Frank thought the useable spaces were limited. He thought a 12-foot setback would be adequate. He modified the findings on pg. 7.

- Findings a, b and e, 2<sup>nd</sup> sentence in each:
  - Remove ‘While’ and capitalize ‘the’.
  - Change ‘may be’ to ‘is’.
  - End the sentence after ‘side yard setbacks, deleting the rest.
- Finding c: Replace italicized finding with ‘Existing terrain limits use.’
- Findings a and e, 1<sup>st</sup> sentence in each: Change ‘development on the parcel was’ to ‘development on the parcel were’.
- Finding e: In the 3<sup>rd</sup> line, change ‘(PDC), then construction’ to ‘(PDC). Construction’.

Hu said the conditions were what they had to do. Frank said those stayed the same. Hu said even without [the variance approval], he’d still have to do them. [The conditional use] seemed like the thing to do. He wouldn’t have suggested it if he didn’t think it would fly. Steve observed they might need to replace the conclusions that had been eliminated in some the findings. He suggested some wording using the example of finding a. Frank fine-tuned the wording further by adding, “Because of these limitations, the proposal is reasonable.” Steve suggested drawing conclusions from the statements in findings b and e also. Frank said okay.

Steve thought this was a weak hardship. There was 100 feet in front of the garage for turning around. This would change it to 105. He didn’t see where that justified a variance and didn’t feel he could support it.

Mike concurred with Frank’s direction. He wasn’t sure about what language to add. He thought the physical limitations to build a new house on the lot required a variance as requested in order to build a new house on the lot.

**Motion made by Mike McKee, and seconded by Frank Mutch, to approve the variance per findings of fact and conclusions as amended. Motion carried, 4 in favor (Don Patterson, Frank Mutch, Mary Jensen, Mike McKee) and one opposed (Steve Rosso).**

#### **CUNNINGHAM CONDITIONAL USE—FINLEY POINT (4:20 pm)**

Tiffany Murphy presented the staff report. (See attachments to minutes in the July 2019 meeting file for staff report.) She read from a public comment received this morning in favor of the request, which had been handed out to the Board. (See attachments to minutes in the July 2019 meeting file for handout.)

Tiffani clarified in the first picture in attachment 4 that this was a storage container rather than a fence. She thought it would remain. It was in the setback area so it wasn’t counted in the impervious surface coverage. Someone added it was temporary. From attachment 3 and 4, she confirmed that a garage existed now and the new construction would enlarge it. The proposed garage was 24 x 50. Regarding the letter in attachment 5, Tiffani pointed to the signature portion, which indicated lot numbers. It sounded like it was a collective list of lot owners, given the language used. It seemed like they were scattered. They weren’t directly adjacent. She had answered the questions in the letter but did not receive a response to that answer.

Steven Cunningham spoke about their application. Regarding the concern about a business in the garage, the purpose of the garage was he had classical cars that he'd like to store there. Elizabeth Cunningham stated no business was planned.

*Public comment opened:* No comment was offered. *Public comment closed.*

Steve gave two changes:

Pg. 5, item #3: At the end of the 5<sup>th</sup> italicized line, remove 'exceeding'.

Pg. 7, condition #2: Round the exact number of the approval (35.98%) to 36%.

**Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use with findings of fact with corrections, and conditions and terms. Motion carried, all in favor.**

#### **SCHIELE CONDITIONAL USE—UPPER WEST SHORE (4:35 pm)**

Rob Edington introduced Larry and Kathy Schiele and their son, and presented the staff report. (See attachments to minutes in the July 2019 meeting file for staff report.)

Rob clarified that the pictures of the neighboring properties in attachment 6 had been supplied by the applicant. He pointed also to the supplemental attachment that had been handed out today with pictures that staff had taken, and described the photos. (See attachments to minutes in the July 2019 meeting file for handout.) Mike asked about the bottom photo in attachment 6 and if it showed a living unit. Rob wasn't sure. It appeared there used to be a single-wide or [home] and this was an accessory building.

Steve recalled other projects where people lived in a future guest house while they built the main house. Why didn't that work here? Rob referred to item #5 on pg. 3 and the definition of a dwelling unit. It couldn't be considered a dwelling unit until they supplied it with water and had a well and a septic system. Those were planned in the future but would be needed before this could be considered a guest house. His understanding was they had a place in Ronan and wanted to stay up [at the Upper West Shore property] temporarily. Steve summarized they'd be camping in the shed. Because of the 2-year timeframe, Rob said they'd recommend the applicants work towards getting their water and sewer. Steve checked that one option was to successfully put in the septic system and drill a well and turn this into a real dwelling. If they did that prior to the end of the two years, this could be converted into something that would allow them to leave it on the lot past the two years. Jacob said that to be a dwelling unit, it had to have a piped water supply. To be a guest house, it could be a dry unit. The guest house definition didn't require a piped water supply. If they used it at a temporary dwelling while they built their house, they didn't have to put water to it to continue to use it as a guest house. Steve replied if they weren't able to complete their house within the 2-year period and they were able to make this into a house, they could go beyond the 2 years. Jacob agreed if it fit the definition of a primary dwelling.

Frank said it didn't have to be removed after two years. They could ask for another two years. Rob explained that would be treated as a new review and they'd have to return to the BOA. Frank asked if it could be kept as a storage building. Rob said if they could demonstrate it

wasn't being occupied, it could be converted via a zoning conformance permit. Frank said the reality was somehow they would have water, electricity and heat if they were going to live there. They would cook and bathe. Rob said the catch was the piped water supply, which was why it couldn't be considered a dwelling. He clarified that the zoning conformance application was for this, not a permanent house. It could be issued after meeting conditions that the Board might approve, if the Board approved this.

Larry Schiele said they wouldn't bathe there. Kathy added they had a place in Ronan and she had a job in the Lakeside area, where they stayed a large percentage of the time to keep Larry out of agriculture. His specialist linked [agriculture] to his brain cancer. They stayed in a vacation rental unit and when it was rented they needed to leave. This would give them a place to stay. They needed to break up some land in Ronan and try to sell it in order to have the funds to put into a house. Larry and Kathy said they would bathe where they were staying now. Larry described it would be mainly camp-type cooking. They would haul 5-gallon jugs of water and have a port-a-potty hidden behind the building so it wasn't noticeable from the main road. It would be temporary. They wouldn't be using it in the winter.

Steve commented you could have graywater associated with food prep and washing, which was an issue they needed to keep in mind. Whether wastewater was sewage or greywater, this might be an issue for the neighbors or the Environmental Health Dept. They might want to put something to handle wastewater pretty high on the list as they developed the property. It was possible that a septic tank could be a holding tank temporarily, and they could have it pumped. Then they could put a field in when they could afford it. This was just a suggestion. They could talk to Environmental Health about how they should do this as they got the funds for improvements.

Don checked for other comments. None were offered.

**Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use with findings of fact and conditions. Motion carried, all in favor.**

**AKSHUN & AKSHUN CONDITIONAL USE—FINLEY POINT (5 pm)**

Tiffani Murphy noted that the agent (Jim Atkinson) and the applicant, George Brimhall, were present and she presented the staff report. (See attachments to minutes in the July 2019 meeting file for staff report.) On pg. 4, item #12, she added that someone from Environmental Health indicated verbally yesterday that the wastewater treatment system application had been received. She recommended keeping the recommendation that it be approved prior to issuance of the zoning conformance permit. She shared a larger version of the site plan on request.

Steve read part of #9 on pg. 3 and asked if the driveways came from Finley Point Lane or from the lot to the north. Jim Atkinson confirmed those came from a different lot. George Brimhall confirmed they owned that lot as well. Jim explained that the current main house was on that lot. They were shifting more to this lot.

Tiffani clarified the location of the current guest house. Jim said it was a small cabin. The other building was a pump house. The guest house was probably historic. It was deeded to someone in 1914.

George Brimhall noted there were about 10 acres between the two lots. He wasn't planning on selling either lot.

**Motion made by Frank Mutch, and seconded by Mary Jensen, to approve the conditional use per the staff report with the findings of fact and conditions. Motion carried, all in favor.**

Mike found the complaint from the south property owner ironic [due to the fact that they had constructed a large building near the property line which created a significant visual impact from the Brimhall property].

#### **MINUTES–Deferred**

#### **OTHER BUSINESS (5:17 pm)**

None.

**Don Patterson, chair, adjourned the meeting at 5:17 pm.**